

1982 WL 189134 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 11, 1982

\*1 Mr. Melvin Barnette,  
Vice President for Business and Finance  
Clemson University  
Clemson, South Carolina 29631

Dear Mr. Barnette:

You have requested the opinion of this Office on the following questions:

1. May a State agency or institution lease publicly-owned real property to a private individual, partnership or corporation, upon which a building or other improvements would be constructed by the private party for the joint use, or for lease-back to the agency or institution?
2. If so, may the private party retain title to the improvements, with a provision that the improvements will revert to the State (or the State will pay an agreed value therefor) at the end of the lease term?
3. Would State Budget and Control Board approval be required for such lease and lease-back agreements?

In our opinion, the answer to all three questions is in the affirmative.

Questions 1 and 2 are answered by the case of [McKinney v. City of Greenville](#), 262 S.C. 227; 203 S.E.2d 680 (1974), in which the Supreme Court upheld the lease by the county, without rental charge, of real property to a private corporation to construct valuable improvements thereon, which improvements were to revert to the county at the end of the lease term. The principal question considered by the court was whether the benefits to the public equalled at least the fair market value of rental for the property. Both the real property tax payments to the county and the fact that the improvements reverted to the county at the end of the lease were considered ample value for the lease. The court also sustained the transaction against attacks on the grounds that it violated the State Constitution's prohibitions against pledging public credit for private use, Art. X, Sec. 6; and against donating public lands for private use, Art. III, Sec. 31.

It is the opinion of this Office that an agency or institution having the statutory power and authority to own and lease real property, may lease same to a private individual, partnership, or corporation, provided the benefits to the public equal the fair market value of such lease. Indirect benefits resulting to the public, such as furtherance of the public purposes of the agency or institution, may be considered in making such transactions. [Elliott v. McNair](#), 250 S.C. 75, 156 S.W.2d 241 (1967). As stated in [McKinney](#), the reversion of improvements at the end of the lease term is also a consideration.

As to the third question, Budget and Control Board approval would not be required for an ordinary lease of land for fair market value by an agency or institution having the statutory authority to give such a lease. However, in view of the provisions of Sec. 137 of the 1981 Appropriations Act requiring Board approval of plans 'for permanent improvements of any nature' prior to construction by any means, and the other provisions of law concerning permanent improvements to State property, it is our opinion that the proposed lease and related agreements should be submitted to the Board for approval.

Sincerely,

\*2 Frank K. Sloan

Deputy Attorney General

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